

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 1, 2004

Division Two

A103374 -- The People v. Billy Joe Rickman.

The case is remanded to the trial court with directions to amend the judgment to award defendant presentence credits as required by the views expressed herein. The judgment is otherwise affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Five

A104886 -- The People v. Gregory Smith.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, July 2, 2004

Division Two

A101056 -- The People v. Victor Lamor Lackey.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Three

A105085 -- In re Orlando G., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Charon P.

Respondent moves to dismiss this appeal from an order entered after a six-month review hearing as moot. In an earlier opinion, we reversed the juvenile court's dispositional order. (*In re Orlando G.* (April 16, 2004, A103230 [nonpub. opn.].) Because the proceedings must revert to the dispositional phase, we agree with respondent that the court's subsequent orders have been mooted. Appellant may appeal from any future order imposing costs on her for services provided after disposition. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Tuesday, July 6, 2004

Division Two

A099945 -- The People v. Ellis Lorenzo Lockett.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.
(Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, July 6, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kay, P.J., Sepulveda, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

A106264 People
 v.
 Camille Johnson et al.
Cause called. Amy Haddix argued for petitioner The People. Arthur Watchel argued for real party in interest Camille Johnson. Cause submitted.

A104257 Elia Eufracio Gonzalez et al.
 v.
 Dale Francis McCann et al.
Cause called. Edie Susman argued for appellants Gonzalez et al. Daphne A. Beletsis argued for respondents. Cause submitted.

At this point the court reconstituted itself to include: Sepulveda, Acting P.J. and Rivera, J.; counsel orally waive Justice Reardon's appearance on the bench.

A103468 Burton H. Wolfe
 v.
 Northern California Presbyterian Homes & Services, Inc. et al.
Cause called. Appellant Burton H. Wolfe argued on his own behalf. Philip Emmons argued for respondents. Cause submitted.

At this point the court reconstituted itself to include: Kay, P.J., Sepulveda, J. and Rivera, J.

A103281 Eugene L. Rose
 v.
 Bruce G. Horn et al.
Cause called. Stephen M. Mackouse argued for appellant Rose. Anthony W. Hawthorne argued for respondents. Cause submitted.

The Court adjourned at 11:15 a.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, July 7, 2004

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., and Margulies, J.; and B. Robbins, Deputy Clerk.

The Court called People v. Donald Curtis Samson (A102394). Martin Kassman answered ready for appellant; however there was no appearance by the Attorney General for respondent. The case was passed until the end of the calendar.

Justice Swager did not participate in argument of the first two cases.

A101351 The People,
 v.
 Fred Cross.
Cause called and argued by Mark D. Greenberg, counsel for appellant, and Ryan McCarroll, counsel for respondent. Cause ordered submitted.

A103735 Adam K. Levin, et al.,
 v.
 Todd A. Meagher, et al.
Cause called and argued by E. Jeffrey Banchero, counsel for appellants, and Martin Orlick, counsel for respondents. Cause ordered submitted.

At this point in the proceedings, Justice Stein left the bench and Justice Swager participated in argument of the last case.

A102394 The People,
 v.
 Donald Curtis Samson.
Cause called and argued by Martin Kassman, counsel for appellant, and Ryan McCarroll, counsel for respondent. Submission deferred; request for additional briefing to be filed by appellant.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, July 7, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; and B. Robbins, Deputy Clerk.

A101966 The People,
v.
Walter Leon Meyer.
Cause called and argued by Gregory R. Ellis, counsel for appellant, and Carey Been, Certified Law Student, counsel for respondent. Cause ordered submitted.

A104837 Beth Anderson,
v.
Paul Weakland.
Cause called and argued by Paul Weakland, appellant in pro per, and Beth Anderson, respondent in pro per. Cause ordered submitted.

Court recessed until Thursday, July 8, 2004 at 9:00 a.m.

Wednesday, July 7, 2004

Division Two

A101101, A101203 & A102558 -- Amdahl Corporation v. Franchise Tax Board.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

A101911 -- In re Marriage of Lugenbeal.

The judgment and all other orders appealed from are affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Thursday, July 8, 2004

Division One

A103220 -- Gregory S. Garetson, as Trustee, etc. v. William F. Garetson et al.

The appeal from the order vacating the stipulation is dismissed. In all other respects, the orders appealed from are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, July 8, 2004

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Margulies, J.; and F. Abad, Deputy Clerk.

A102990 The People,
v.
Jason Mitchell Marcacci.
Cause called and argued by Tim Pori, counsel for appellant, and Ralph Sivilla, counsel for respondent. Cause ordered submitted.

A100931 The People,
v.
Khante Shante Johnson.
Cause called and argued by Roberta Simon, counsel for appellant, and Gregg Zywicke, counsel for respondent. Cause ordered submitted.

A103367 In re Kayla C.
The People,
v.
Kayla C.
Cause called and argued by Laretta Komlos, counsel for appellant, and Ralph Sivilla, counsel for respondent. Cause ordered submitted.

A101941 Sierra Club,
v.
County of Napa, et al.
Beringer Wine Estates, et al.
Cause called and argued by Thomas Lippe, counsel for appellant, Laura Anderson, counsel for respondents, and James Moose, counsel for real parties in interest. Cause ordered submitted.

Court adjourned.

Thursday, July 8, 2004 (continued)

Division Two

A106068 -- In re Samantha A., a Person Coming Under the Juvenile Court Law. Social Services Agency v. Johnny A.

By the Court: Appellant having failed to file a brief after notice given under rule 17(a)(1) of the California rules of Court, the appeal is dismissed. Kline, P.J.

A102064 -- In re Richard H., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health and Human Services v. Richard H.

The motion to dismiss is granted, along with respondent's request that this court take judicial notice of the certified court document containing the results of the completed genetic test. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A103605 -- In re Damondre J., a Person Coming Under the Juvenile Court Law. The People v. Damandre J.

The juvenile court is directed to modify its dispositional order of July 25, 2003, to strike that portion requiring appellant "[b]e committed to Juvenile Hall for . . . two additional weekends to be assigned at the discretion of the probation [officer]." As so modified, the order is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A105853 -- In re Andrew T., a Person Coming Under the Juvenile Court Law. The People v. Andrew T.

By the Court: Appellant having filed an abandonment of appeal in this court, the appeal is dismissed and the remittitur is to issue forthwith. Kline, P.J.

A106463 -- In re the Marriage of Gregory and Debra Der Torossian. Debra Der Torossian v. Gregory Der Torossian.

By the Court: Upon request of counsel for appellant, the appeal is dismissed. The remittitur shall issue forthwith. Kline, P.J.

Thursday, July 8, 2004 (continued)

Division Three

A100714 -- CCPA No. 1 v. County of Sonoma.

By the Court: Submission of the above entitled cause is vacated on the ground that further consideration of the merits of the issues raised on appeal is required. The cause is hereby ordered resubmitted. McGuiness, P.J.

Division Five

**A105629 --In re P.T., a Person Coming Under the Juvenile Court Law.
The People of the State of California v. P.T.**

The orders are affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

A102068 -- The People v. Antoine Smith.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, July 9, 2004

Division One

A104703 -- Jeffrey Garrett Fredenburg v. City of Fremont, et al.

By the Court: The petition for rehearing is denied. Since this court's June 11, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Marchiano, P.J.

A103685 -- Jeffrey Garrett Fredenburg v. City of Fremont, et al.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A102990 -- The People v. Jason Mitchell Marcacci.

The sentence imposed is reversed and the case is remanded to the trial court to exercise its discretion in resentencing defendant to a term within the four-year cap agreed to as part of defendant's negotiated plea. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A105034 -- The People v. James William Robinett.

We find no arguable issues that require further briefing and accordingly, affirm the judgment. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A101414/A101792 -- Michael A. Waul v. Circuit City Stores, Inc., et al.

The judgment is affirmed. Circuit City is awarded its costs on appeal from the judgment. The order awarding reasonable expenses and attorney fees incurred in proving the truth of matters denied in response to requests for admission is reversed. Waul is awarded his costs on appeal from the order. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Friday, July 9, 2004 (continued)

Division Four

A099483, A099484, A099770 -- David Phillips et al. v. Richard Bowles et al.

A100270 -- Farmers Insurance Exchange et al. v. David Phillips et al., Richard Bowles et al.

The judgment in *Phillips v. Bowles* is modified to remove fraud damages of \$466,752, and is otherwise affirmed. The postjudgment order in *Phillips v. Bowles* awarding attorney fees of \$972,250 is reversed. The parties shall bear their own costs and attorney fees incurred on appeal. The order granting summary judgment in *Farmers Insurance Exchange v. Phillips* is deemed a final judgment, and is affirmed. Respondents shall recover from appellants costs incurred on appeal, and respondent Farmers shall also recover from appellants its reasonable attorney fees incurred on appeal. The amount of fees and costs shall be determined by the trial court upon timely filing of memoranda of costs. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A099456 -- The People v. Victor Renard Cyrus, Jr.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Monday, July 12, 2004

Division One

A104613 -- The People v. Noah Agape Bunag.

By the Court: The petition for rehearing is granted. Marchiano, P.J.

Division Two

**A102017 -- Matt Cole et al. v. Alameda County Board of Supervisors;
Ben Souhorukoff, R.P.I.**

The judgment dismissing the action is affirmed. Respondents are awarded their costs on appeal Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Monday July 12, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Corrigan J., and C. Turner, Deputy Clerk.

Justice McGuiness announced that the panel for the following case is comprised of Corrigan, J., Parrilli J., and himself, but that Parrilli J., is away from the court and is unavailable for oral argument. All parties were informed that Parrilli J. will have access to and will review the taped proceedings. The court proceeded with argument.

Elizabeth Vasquez,

A100414 v.

Calif. Dept of Developmental Services.

Cause called and argued by Lawrence King, counsel for appellant, and Mary Cain-Simon, counsel for respondent.

Cause ordered submitted.

Court Adjourned

Tuesday, July 13, 2004

Division One

A104327 -- In re Ivan G., a Person Coming Under the Juvenile Court Law. The People v. Ivan G.

Accordingly, we remand the case to the trial court to modify the probation condition in accordance with the views expressed herein. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A102299 -- The People v. Edwin Prasad.

The judgment is reversed and remanded to the trial court for further proceedings, including the resentencing of appellant, not inconsistent with the foregoing. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A101999 -- The People v. Sammie Lee Ford.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A105024 -- The People v. Shawn Christen Ibarra.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A103281 -- Eugene L. Rose, as Personal Representative, etc. v. Bruce G. Horn et al.

The order setting aside the default is affirmed. The case is remanded for further proceedings. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, July 13, 2004 (continued)

Division Four

A102507 -- The People v. Michael Anthony Vicks.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A101950 -- Jun Wai Tom et al. v. City and County of San Francisco et al.; San Francisco Tenants Union.

By the Court: Good cause having been shown, the written opinion which was filed on June 22, 2004, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is therefore ordered that it be published in the official reports. Jones, P.J.

Wednesday, July 14, 2004

Division One

A104837 -- Beth Anderson v. Paul Weakland.

The order appealed from is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A103650 -- Anthony Hawthorne et al. v. City of Berkeley et al.; Alan Swain et al., R.P.I.

Many decisions involving the application of objective permit standards to proposed building plans require the exercise of common sense judgment that does not take the process out of the purview of a ministerial function. The plain language of the BMC and the actions of the City in issuing the Swains' building permit involved no more than the application of fixed standards and objective measurements. The City's interpretation involved a non-discretionary application of the plain language of the ordinances to the Swains' proposal. The order appealed from is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A102611 -- The People v. Daniel George Minto III.

The judgment and sentence are reversed and the matter remanded to the trial court for the resentencing of appellant. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A100414 -- Elizabeth Vazquez v. The California Department of Developmental Services.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, July 14, 2004 (continued)

Division Four

A104715 -- In re the Marriage of Patricia M. Rivasplata and George L. Rivasplata.

The Court: The petition for rehearing filed by respondent on July 9, 2004, is denied. (See order.) There is no change in the judgment. Reardon, Acting P.J. (Not for Publication.)

Thursday, July 15, 2004

Division One

A101351 -- The People v. Fred Cross.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A106181 & A106182 -- Michelle G. et al. v. Solano County Superior Court; Solano County Health and Social Services Department, R.P.I.

The petitions are denied on the merits (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal barred]; § 366.26, subd. (l)(1)), and given the nearness of the July 21 hearing, our decision is final forthwith (rule 24(b)(3)). Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A105639 -- Richard C. Mudge v. California Pacific Medical Center.

By the Court: Appellant having failed to file a brief after notice given under rule 17(a)(1) of the California Rules of Court, the appeal is dismissed. Kline, P.J.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, July 15, 2004

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., I. Santos, Deputy Clerk and S. Wheeler, Deputy Clerk.

A101292/
A102317

City of San Rafael,
v.

Margaret L. Zitek.

Cause called and argued by Richard R. Dale, counsel for appellant and Kenneth Morris, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Ruvolo joined the bench for the remainder of the calendar and Presiding Justice Kline left the bench.

A099947

The People,
v.

Darron Hart.

Cause called and argued by Deanna F. Lamb, counsel for appellant and John R. Vance, Jr., Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A103817

Robert E. Gonzales,
v.

Lilia M. Gonzales.

Cause called and argued by George C. Martinez, counsel for appellant and Robert Gonzales, counsel for respondent. Cause ordered submitted.

A102026

City and County of San Francisco,
v.

Flying Dutchman Park, Inc., et al.

Cause called and argued by Owen Clements, counsel for appellant and Brian McCauley, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Lambden, J., Ruvolo,

J., I. Santos, Deputy Clerk and S. Wheeler, Deputy Clerk.

- A099098 The People,
 v.
 Michael Wayne Hunter.
 Cause called and argued by Ross W. Thomas, counsel for appellant, and
 Allen R. Crown, counsel for respondent. Cause ordered submitted.
- A104266 Daniel Siker, et al.,
 v.
 Andrew Byrnes, et. al.
 Cause called and argued by James Brandan Kraus, counsel for appellant,
 and Nils Christopher Rosenquest, counsel for respondent. Cause ordered
 submitted.
- A100600 Ali Mirzai, et al.,
 v.
 Joseph Matossian.
 Cause called and argued by Brian Beverly, counsel for appellant, and Owen
 Mayer, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Justice Haerle joined the bench for the
 remainder of the calendar and Justice Ruvolo left the bench.
- A102405 Campaign to Restore Jackson State Redwood Forest, et al.,
 v.
 California Department of Forestry and Fire Protection, et al.
 Cause called and argued by Charles William Getz, counsel for appellant,
 and Paul Vincent Carroll, counsel for respondent. Cause ordered
 submitted.
- A103836 Jennifer Miller, et al.,
 v.
 Warren Rupf, et al.
 Cause called and argued by William Campisi, counsel for appellant, and
 Greg C. Harvey, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Thursday, July 15, 2004 (continued)

Division Three

A103897 -- The People v. Marcus Teague.

There are no meritorious issues to be argued. The judgment is affirmed.
Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A102397 -- The People v. Aaron Friedman.

We hold the protective sweep was both properly limited in scope and based on articulable facts, which reasonably could have led the officers to conduct a protective sweep of the appellant's apartment in order to dispel the possibility of danger from unknown assailants and to determine the presence of additional victims at the scene of the crime. The subsequently issued search warrant was not therefore, based upon unlawfully obtained information because the protective sweep was reasonable and proper. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A099986 -- The People v. Donald Ray Humphreys.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

A104001 -- In re Erik S., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Carol R.

The order is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Friday, July 16, 2004

Division Two

A100943 -- The People v. Kenneth Franklin.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A102545 -- Christian Simonsen et al. v. Kevin Sid et al.

The judgment is affirmed. Costs on appeal are awarded to respondents. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A103894 -- In re Marriage of Spanier.

The order appealed from is reversed and the matter remanded to the trial court for proceedings not inconsistent with the foregoing opinion. Costs on appeal are awarded to appellant. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Four

**A106704 -- Boonie H. v. The Superior Court of Alameda County;
Alameda County Department of Social Services, R.P.I.**

The petition is denied on the merits. (Cal. Rules of Court, rule 39.1B(o).) This decision is final immediately. (*Id.*, rule 24(b).) Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Monday, July 19, 2004

Division One

A104613 -- The People v. Noah Agape Bunag.

We have thoroughly reviewed the record and find no arguable issues. Defendant's arguments, made in his letter brief, do not provide any basis for reversing the judgment. There are no issues requiring further briefing. The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Four

A098366 -- The People v. Dana M. Deweese.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Tuesday, July 20, 2004

Division One

A105320 -- In re Perry S., a Person Coming Under the Juvenile Court Law. The People v. Perry S.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A102205 -- The People v. Darryeal Woodrow Wilson.

By the Court: The petition for rehearing is granted. The parties may file simultaneous letter briefs, limited to the issues raised in the petition for rehearing, within 30 days of the date of this order. The parties may file simultaneous responsive letter briefs within 15 days thereafter. Marchiano, P.J.

Division Two

A100119, A100846 -- James Reid v. Union Planters Mortgage.

The judgment in favor of Union Planters is affirmed. The order denying Union Planters its attorney fees in defense of Reid's action is reversed and the matter is remanded to the trial court for further action consistent with the views set forth herein. Union Planters is to recover its costs on this appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Four

A103838 -- The People v. Jamar Byron Lindsey.

The Court: The petition for rehearing filed by respondent on July 6, 2004, is denied. The opinion filed herein on June 29, 2004, is ordered modified as follows: (See order.) There is no change in the judgment. Kay, P.J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, July 20, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kay, P.J., Reardon, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A103980 Marie Bowman et al.
v.
City of Berkeley
Cause called. Susan Brandt-Hawley argued for appellants Bowman et al. Ellen Garber argued for real party in interest Affordable Housing Associates et al. Zach Cowan argued for respondent City of Berkeley. Cause submitted.

A104682 Gary F. Gamper
v.
State of California
Cause called. Appellant Gary F. Gamper argued on his own behalf. Thomas Blake argued for respondent. Cause submitted.

At this point the court reconstituted itself to include: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A102770 People
v.
Dante Cormier
Cause called. Frank McCabe argued for appellant Cormier. Ross Moody argued for respondent. Cause submitted.

A098611 Morris Sanders et al.
v.
Dame Construction Co., Inc.
Cause called. Joel Liberson argued for appellant Dame Construction Co., Inc. Stephen B. Welch argued for respondents. Cause submitted.

The Court recessed at 11:12 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, July 20, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Joe Frasier, Bailiff.

- A104078 Roy M. Frye
 v.
 Tenderloin Housing Clinic, Inc.
Cause called. Paul F. Utrecht argued for appellant Frye. Stephen L. Collier argued for respondent. Cause submitted.
- A097466 Julie Ramos
 v.
 Maria E. Castillo
Cause called. Nancy M. Conway argued for appellant Ramos. Colin H. Jewell argued for respondent. Cause submitted.
- A104121 People
 v.
 Jason Wayne Dikes
Cause called. Pamela Hooley argued for appellant People. L. Richard Braucher argued for respondent. Cause submitted.

The Court adjourned at 2:48 p.m.

Tuesday, July 20, 2004 (continued)

Division Five

A105805 -- The People v. Clark D. McDuffie.

The order revoking probation is affirmed. Jones, P.J. We Concur:
Simons, J., Gemello, J. (Not for Publication.)

Wednesday, July 21, 2004

Division One

A104932 -- The People v. Anthony Thomas Carnahan.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A105756 -- The People v. Robert Stephen Hughes.

By the Court: The petition for rehearing is granted. Appellant may file a supplemental opening brief, limited to the issues raised in the petition for rehearing, within 20 days of the date of this order; respondent may file a response within 15 days thereafter; and appellant may file a reply within 10 days thereafter. Marchiano, P.J.

Division Two

A104592 -- The People v. James Eugene Orr, Jr.

The appeal is dismissed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, July 21, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: Corrigan J, Parrilli J., Pollak J., and C. Turner, Deputy Clerk.

A002546 Alexander Sanchez,

v.

Thomas Weisel Partners,

Cause called and argued by John Houston Scott, counsel for appellant, and Gary R. Siniscalco, counsel for respondent.

Cause ordered submitted.

Justice Pollak left the bench and Justice McGuiness took his place on the bench

A100860 Anne Marselis,

A101787 v.

A102439 Allstate Insurance Company,

Cause called and argued by William Green, counsel for appellant, and Michael A. Barnes, counsel for respondent.

Cause ordered submitted.

A101025 The People,

v.

Jose Angel Torres,

Cause called and argued by Eleanor M. Kraft, via tele-conference, counsel for appellant, and Rayan B. McCarroll, counsel for respondent.

Cause ordered submitted.

Court Adjourned

Wednesday, July 21, 2004 (continued)

Division Four

A104466 -- City of St. Helena v. Public Utilities Commission; Napa Valley Wine Train, Inc., R.P.I.

The Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on June 21, 2004, be modified as follows: (See order.) There is no change in the judgment. The petitions for rehearing are denied. Kay, P.J. (Certified for Publication.)

A105096 -- In re Cornell J., a Person Coming Under the Juvenile Court Law. The People v. Cornell J.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A106264 -- The People of the State of California v. The Superior Court of San Francisco County; Camille Johnson et al., R.P.I.

Let a peremptory writ of mandate issue, directing the trial court to vacate its order of February 26, 2004, granting the section 995 motion and dismissing charges, enhancements, and alternate penalty provisions under the STEP Act. Instead respondent shall enter a new order denying the section 995 motion. Having served their purposes, the alternative writ is discharged and the stay previously issued by the court is dissolved upon the finality of this opinion. This opinion shall become final in this court within 10 days of the filing of this opinion. (See Cal. Rules of Court, rule 24(b)(3).) Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

A104433 -- Gregory Levin et al. v. Rivka Sigal.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Thursday, July 22, 2004

Division Three

A102513 -- Stanley Janik v. Rudy, Exelrod & Zieff et al.

By the Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on June 22, 2004, be modified as follows: (See order.) The petition for rehearing is denied. There is no change in the judgment. McGuiness, P.J. (Certified for Publication.)

A103698 -- In re Richard S., a Person Coming Under the Juvenile Court Law. The People v. Richard S.

The juvenile court's jurisdictional and dispositional orders are affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A099906, A101339 -- Richard A. Wells, et al. v. Osvaldo Rego Monteiro.

By the Court: Order Modifying Opinion. The opinion filed in this case on June 30, 2004, is hereby ORDERED modified as follows: (See order.) This modification does not change the judgment. McGuiness, P.J. (Not for Publication.)

Division Five

A103146 -- Elizabeth Gomez v. United States Fidelity and Guaranty Company.

The appeal is dismissed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Thursday, July 22, 2004 (continued)

A098067 -- Robert Roe v. State Personnel Board; Department of Justice, R.P.I.

A098624 -- Robert Roe v. State Personnel Board; Department of Justice, R.P.I.

The superior court judgment granting the petition for writ of mandate is affirmed in part and reversed in part. The superior court is directed to enter a new judgment granting the petition for writ of mandate and remanding this matter to the Personnel Board for the following limited purposes. The superior court shall direct the board to conduct proceedings to determine the amount of backpay due Roe for the *Skelly* violation for the period September 1, 1992, through May 5, 1999, and to award it forthwith. Further, as the Board has already heard the evidence on the merits, the superior court shall direct the Board to exercise its discretion and make a finding whether Roe's dismissal was for good cause. Each party is to bear their own costs on appeal. Gemello, J. We Concur: Jones, P.J., Simons, J. (Certified for Partial Publication.)

A105061 -- In re Lauren S., a Person Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. Sheila S.

The order of December 9, 2003, is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A103958 -- In re Lauren S., a Person Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. Sheila S.

The order terminating parental rights is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Friday, July 23, 2004

Division Two

A095846 -- Yvette Munoz et al. v. City of Union City et al.

The judgment is affirmed in part and reversed in part. The case is remanded to the trial court with directions to enter a new judgment consistent with the jury's verdict against Woodward and this opinion. Costs on appeal are awarded to respondents. Ruvolo, J. I Concur: Haerle, J. (See concurring opinion of Kline, P.J.) (Certified for Publication.)

Division Three

A101102 -- Enrique Cervantes v. Law Offices of John G. Hanlin, et al.

The decision and order of the trial court denying appellant's special motion to strike pursuant to section 425.16 is affirmed. Appellant shall pay respondents' costs on this appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A103656 -- Sovereign General Insurance Services, Inc. v. Aon Limited, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A103962 -- Joan Levy Zentner, et al. v. Wells Fargo Bank, et al.

By the Court: Since this court's June 28, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

Division Three

A103962 -- Joan Levy Zentner, et al. v. Wells Fargo Bank, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Friday, July 23, 2004 (continued)

Division Five

A102742 -- Old Construction, Inc. v. City of San Ramon.

The judgment is reversed and the matter remanded with directions to permit CLD leave to file an amended complaint. The parties shall bear their own costs on appeal. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Publication.)

Monday, July 26, 2004

Division Three

A103705 -- Peggy Belcher-Dixon v. Rita Saenz, et al.

By the Court: The request that the written opinion filed on June 24, 2004, be certified for publication pursuant to rule 976 of the California Rules of Court is denied. McGuiness, P.J.

A101772 -- The People v. Richard Gutierrez.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A103922 -- Estate of Marie Senaldi, Deceased.

The order of the probate court is reversed. On remand, the court is directed to enter an order consistent with this opinion. Costs are awarded to appellant. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A102300 -- The People v. John Lee Sullivan.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A103546 -- The People v. Joel Torres.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A101272 -- The People v. Dwight Dwayne Dunn.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A106099 -- The People v. Marcus D. Harmon.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Monday, July 26, 2004 (continued)

Division Four

A098944 -- The People v. Michael Spencer.

By the Court: Order Modifying Opinion and Denying Rehearing.
Defendant's petition for rehearing is denied. The opinion filed on June 29, 2004, is modified as follows: (See order.) The above modification does not effect any change in the judgment. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Tuesday, July 27, 2004

Division One

A103367 -- In re Kayla C., a Person Coming Under the Juvenile Court Law. The People v. Kayla C.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A100931 -- The People v. Khante Johnson.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A103735 -- Adam K. Levin et al. v. Todd A. Meagher et al.

The trial court's order entering a preliminary injunction is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A101966 -- The People v. Walter Leon Meyer.

The evidence of appellant's guilt was overwhelming. His fingerprints were found on multiple pieces of the broken window glass left outside the house at the point of entry on the day the burglary was committed. The dispersal of appellant's fingerprints on both sides of the glass tends to negate any innocent, inadvertent or ephemeral contact with the window. When questioned, appellant did not provide any explanation for the presence of his fingerprints on the glass, and denied that he had ever been to the burglarized house. And when the burglary was committed, appellant lived in very close proximity to the victim's property. The prior burglary offense was neither remote in time nor more inflammatory in nature than the testimony concerning the charged offense. (See *People v. Brown* (2000) 77 Cal.App.4th 1324, 1338; *People v. McCray* (1997) 58 Cal.App.4th 159, 173.) And finally, any potentially inflammatory or mistaken consideration of the prior acts evidence was alleviated by the trial court's instruction that directed the jury not to consider the evidence for the purpose of finding "disposition" or any purpose other than "to show the existence of intent which is a necessary element of the crime charged." (CALJIC no. 2.50.) "The jury is presumed to have adhered to the court's instructions." (*People v. Scheer, supra*, 68 Cal.app.4th 1004, 1023.) Even if error was committed, on the record before us we find that it was harmless. (*People v. Wade, supra*, 48 Cal.App.4th 460, 470.) Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Tuesday, July 27, 2004 (continued)

Division Two

A102210 -- Thomas M. Meacham v. FM Industries, Inc.

The judgment is reversed and the matter is remanded. Appellant to recover costs on appeal. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A101995 -- The People v. Kimberly Nicole Romby.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

A103656 -- Sovereign General Insurance Services, Inc. v. Aon Limited, et al.

By the Court: Since this court's June 29, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Corrigan, Acting P.J.

A101025 -- The People v. Jose Angel Torres.

The judgment and sentence imposed are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A104424 -- In re Savannah C., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Aaron C.-H.

The order is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Tuesday, July 27, 2004 (continued)

A102770 -- The People v. Donte Cormier.

A104621 -- In re Donte Cormier, on Habeas Corpus.

The judgment is affirmed. The petition for writ of habeas corpus is denied. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A104078 -- Steven Frye v. Tenderloin Housing Clinic, Inc.

The order granting summary adjudication as to the fraud cause of action is affirmed. The order granting judgment on the pleading as to the money had and received and breach of fiduciary duty is reversed. The matter is remanded for further proceedings not inconsistent with this opinion. Each party to bear their own costs on appeal. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Certified for Publication.)

Division Five

A100923 -- Vanstar Corporation v. AT&T Solutions, Inc.

The judgment is reversed, and the matter is remanded to the trial court for further proceedings, consistent with the views expressed in this opinion. Costs to appellant. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, July 28, 2004

Division One

A104986 -- The People v. Mark Lamont Moore.

The judgment is modified to award defendant an additional 165 days of sentence credits, consisting of 111 days of actual custody and 54 days of conduct credits. (*People v. Fry* (1993) 19 Cal.App.4th 1334, 1341.) The clerk of the superior court is ordered to amend the abstract of judgment accordingly and forward a copy of the amended abstract of judgment to the California Department of Corrections. As so modified, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A105502 -- Andrew W. Shalaby v. The State of California.

Since Shalaby's appeal does not satisfy the requirements of sections 904.1 and 902, we hereby dismiss the appeal. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Three

A105030 -- The People v. Jonathan Boren.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

A098611 -- Dame Construction Co., Inc. v. Independent Construction Co.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Wednesday, July 28, 2004 (continued)

A104121 -- In re Jayson Wayne Dikes, on Habeas Corpus.

The order of the trial court is reversed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A104668 -- Fildres Runez v. Guy Roland Seaton et al.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A105416 -- The People v. Gary Savage.

Even assuming the sentence that was then imposed can now be challenged on appeal, we find no error in its imposition. There are no meritorious issues to be argued on appeal. The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A103468 -- Burton H. Wolfe v. Northern California Presbyterian Homes & Services, Inc. et al.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A099657 -- Jacqueline Badenhause v. Diana Menendez et al.

Let a peremptory writ of mandate issue, directing the trial court to vacate its order titled “judgment” on appellant’s “application for permanent injunctive relief”, and to enter a new and different order reflecting its determination whether to issue a preliminary injunction, and setting the balance of the case for further proceedings. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A104024 -- The People v. Shelia Kaye Warner.

The orders of the trial court are affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Wednesday, July 28, 2004 (continued)

A102118 -- Neela Walia v. Norma Sayage; Jabir Walia.

The judgment is affirmed. Each party shall bear its own costs. Stevens, J.
We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, July 29, 2004

Division Two

A100425 -- The People v. John David Aragon.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.
(Not for Publication.)

A105390 -- The People v. Cebren Buie.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.
(Not for Publication.)

A104680 -- Philip Jameson v. Sutter Medical Center of Santa Rosa.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J.,
Ruvolo, J. (Not for Publication.)

**A105060 -- In re Decorrah A. et al., a Person Coming Under the
Juvenile Court Law. San Francisco Department of Human Services v. Larry
A.**

The order of the trial court is affirmed. Stevens, J. We Concur: Jones,
P.J., Gemello, J. (Not for Publication.)

Division Three

**A100860, A101787 & A102439 -- Anne Marselis v. Allstate Insurance
Company.**

The judgment, the fee award, and the order on the motion to tax costs are
affirmed. The parties shall bear their own costs on appeal. Parrilli, J. We Concur:
McGuinness, P.J., Corrigan, J. (Certified for Partial Publication.)

A103351 -- The People v. David Allen Sanders.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J.,
Pollak, J. (Not for Publication.)

Thursday, July 29, 2004 (continued)

Division Four

A103425 -- The People v. Scott Edward Barnes.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A097466 -- Julie Ramos v. Maria Castillo et al.

The judgment is affirmed. The parties shall bear their own costs and attorney fees incurred on appeal. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Friday, July 30, 2004

Division One

A102765 -- Jian Hua Li v. Ernest Orlando Lawrence Berkeley National Laboratory et al.

The Court: It is ordered that the opinion filed herein on June 30, 2004, be modified as follows: (See order.) There is no change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

Division Two

A105913 -- The People v. Jomarlon Darrell Jordan.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A103334 -- The People v. Ray Allen Mays.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A104257 -- Elia Eufrazio Gonzalez et al. v. Dale Francis McCann, et al.

As appellants produced no evidence from which it might be concluded that an exception to the going and coming rule exists in this case, the trial court correctly ruled that the going and coming rule precludes Pristine's liability as matter of law. The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A104759 -- In re the Marriage of Delbert Lee King and Sara Anne King.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Friday, July 30, 2004 (continued)

A104996 -- The People v. Bismark Martin Ocampo.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J.
(Not for Publication.)

Division Five

A102872 -- Irina Neumann v. Hector Jose Barrillas Melgar.

The judgment and order denying a new trial are vacated, and the matter is remanded for further proceedings consistent with this opinion. Each party to bear its own costs on appeal. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J.
(Certified for Partial Publication.)

A101664 -- The People v. Kenneth Singleton.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J.
(Not for Publication.)